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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/981,594	10/17/2001	Jean-Francois Biegun	CAC.P0022	8151

7590

10/24/2003

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Akron, OH 44308-1456

EXAMINER

LANDREM, KAMRIN R

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 10/24/2003

6

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/981,594

Applicant(s)

BIEGUN ET AL.

Examiner

Kamrin R. Landrem

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 and 5-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 5-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Hollister (USPN 5,326,361).

Claim 1, with regards to a femoral component (20) having a trochlean part (23) and at least one condyle (21,22), see Figs. 5 and 6. With regards to trochlean trajectory it is anticipated that applicant is referring to the area of travel along the curved path of the trochlean groove (23), see SP in Fig. 3. The set of internal flat sides (20a,b,c,d,e) is anticipated by Hollister, see Figs. 5 and 6. With regards to a reference line (TP) in the horizontal perspective and the perpendicular projection of the trochlean trajectory (SP), see Figs. 3 and 9. The tilt angle is anticipated by  $\beta$  of Figs. 9 and 10. The angle value of  $\beta$  is different than absolute zero when orthogonally projected within the medial lateral perspective. Hollister discloses that this angle can have a value between 3 and 7 degrees, see col. 8, lines 24-27.

Claim 2, with regards to an internal open cage has five flat sides, see (20a,b,c,d,e) in Fig. 5.

Claim 3, with regards to the spherical shape of condyles, see Figs. 5 and 6.

Claim 4, with regards to tilt angle and its relation to the femur's external rotation, see col. 8, lines 24-29.

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Claim 5, with regards to tilt angle, see col. 8, lines 24-27.

Claim 6, with regards to a couple of femoral components having respective tilt angles that have opposite trigonometric sides, Hollister discloses a left femoral component, however it is anticipated that a right femoral component would have the appropriate angle (opposite that of the left knee) to align with the body's mechanical axis. See col. 8, line 62-65

Claim 7, with regards to respective tilt angles having the same absolute value; it is inherent that both right and left femoral components would possess similar tilt angles. See col. 8, lines 24-27 and lines 62-65.

Claims 8-12, with regards to tibial component (24), see Fig. 5.

New claims 13 and 14 are anticipated by Hollister.

#### ***Response to Amendment***

The Examiner acknowledges the cancellation of Claim 4 and amendments to the specification and the drawings. Objections with regards to drawings, specification, and claims are hereby withdrawn in view of amendment submitted August 22, 2003.

#### ***Response to Arguments***

Applicant's arguments filed August 22, 2003 have been fully considered but they are not persuasive. With regards to applicant's arguments that Hollister does not define a projection of the trochlean trajectory that is perpendicular to a reference line defined by the condyles, the examiner disagrees. As broadly claimed it is unclear as to what portion (anterior or posterior) of the condyles and what line of contact (contact with tibia during articulation or contact of

recessed femur and femoral component) the reference is determined from. Therefore, with reference to Figure 9, Hollister discloses a femoral component having a trochelan trajectory that is perpendicular relative to a perpendicular reference line indicated by the flexion extension axis (FE). The tilt angle value of  $\beta$  is different than absolute zero when orthogonally projected within the medial lateral perspective. Hollister discloses that this angle can have a value between 3 and 7 degrees, see col. 8, lines 24-27.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kamrin R. Landrem whose telephone number is 703-305-8061. The examiner can normally be reached on 8:00-5:00, Monday-Friday.

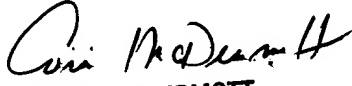
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 703-308-2111. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

Kamrin Landrem  
Examiner  
AU 3738

KRL

  
CORRINE McDERMOTT  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700